

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHAEL BROWN,

Petitioner,

v.

Case Number 04-10080

Honorable David M. Lawson

KENNETH MCKEE,

Respondent.

ORDER DENYING MOTION FOR CERTIFICATE OF APPEALABILITY

The petitioner filed a petition for a writ of habeas corpus on March 31, 2004. On July 26, 2012, the Court entered an opinion and order determining that the petitioner was not fully informed about the maximum sentence exposure that he faced upon entry of his guilty plea. The Court found that the petitioner misunderstood the plea agreement as allowing him to withdraw his plea if his maximum sentence exceeded fourteen years, and that his understanding was reasonable under all of the circumstances. On this basis, the Court conditionally granted the writ, allowing the State to cure the defect in the plea proceedings by either sentencing the petitioner to a maximum sentence not to exceed fourteen years, allowing him to withdraw his plea, or releasing him.

On August 24, 2012, the petitioner filed a motion for certificate of appealability “concerning the portions of this Court’s July 26, 2012 rulings permitting the respondent to satisfy the Court’s conditional writ of habeas corpus by allowing Mr. Brown to withdraw his guilty plea.” Mot. for Certificate of Appealability at 1.

A certificate of appealability may issue “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). Courts must either issue a certificate of appealability indicating which issues satisfy the required showing or provide reasons why such

a certificate should not issue. 28 U.S.C. § 2253(c)(3); Fed. R. App. P. 22(b); *In re Certificates of Appealability*, 106 F.3d 1306, 1307 (6th Cir. 1997). To receive a certificate of appealability, “a petitioner must show that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further.” *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003) (internal quotes and citations omitted).

The Court finds that fair minded jurists would not debate whether the remedy ordered by the Court was a reasonable resolution of the petition, nor would reasonable jurists debate whether the issues presented in the petitioner’s motion are adequate to deserve encouragement to proceed. The Court will therefore deny the motion for certificate of appealability.

Accordingly, it is **ORDERED** that the petitioner’s motion for certificate of appealability [dkt. #45] is **DENIED**.

s/David M. Lawson
DAVID M. LAWSON
United States District Judge

Dated: August 31, 2012

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on August 31, 2012.

s/Deborah R. Tofil
DEBORAH R. TOFIL